

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF YAVAPAI

5 **FILED.**
O'Clock p.M.

JUL 13 2011 ✓

SANDHA K MARKHAM, Clerk
By: Karen Wilkes

THE STATE OF ARIZONA)

Plaintiff,)

vs.)

STEVEN CARROLL DEMOCKER)

Defendant.)

No. P1300CR2008-1339

BEFORE:

THE HONORABLE WARREN R. DARROW
JUDGE PRO TEMPORE OF THE SUPERIOR COURT
DIVISION SIX
YAVAPAI COUNTY, ARIZONA

PRESCOTT, ARIZONA
THURSDAY, SEPTEMBER 16, 2010

REPORTER'S TRANSCRIPT OF PROCEEDINGS

JURY TRIAL

KATHY JOHNSTON, RPR
Certified Reporter
Certified Reporter No. 50164

 **ORIGINAL**

LOTT REPORTING, INC.

316 North Alarcon Street
Prescott, AZ 86301
928.776.1169

I N D E XT E S T I M O N YWITNESSPAGE**ROGER HOOVER**

Cross-Examination by Ms. Chapman	4
Redirect Examination by Mr. Butner	23
Questions by the Jury	27
Follow-up Questions by Mr. Butner	29
Follow-up Questions by Ms. Chapman	31
Follow-up Questions by Mr. Butner	33
Questions by the Jury	33
Follow-up Questions by Mr. Butner	34
Follow-up Questions by Ms. Chapman	36
Questions by the Jury	38
Follow-up Questions by Mr. Butner	38
Follow-up Questions by Ms. Chapman	39
Questions by the Jury	40
Follow-up Questions by Mr. Butner	41
Questions by the Jury	42

A P P E A R A N C E S

On Behalf of the State:

Mr. Joseph Butner and Mr. Jeffrey Paupore
Yavapai County Attorney's Office
255 East Gurley Street
Prescott, Arizona 86301

On Behalf of the Defendant:

Mr. John Sears
P.O. Box 4080
Prescott, Arizona 86302

Mr. Larry Hammond and Ms. Anne Chapman
Osborn Maledon, P.A.
2929 North Central Avenue
21st Floor
Phoenix, Arizona 85012

P R O C E E D I N G S

THE COURT: Thank you. Please be seated.

The record will show the presence of the defendant, Ms. Chapman and Mr. Sears on behalf of the defendant. Mr. Butner's representing the State. The jury is present. And the witness, Detective Hoover, is on the stand and has previously been sworn.

Ms. Chapman, you can start your cross-examination.

ROGER HOOVER,
called as a witness herein, having been previously duly sworn, was examined and testified as follows:

C R O S S - E X A M I N A T I O N

BY MS. CHAPMAN:

Q. Good afternoon, Mr. Hoover.

A. Good afternoon.

Q. You and I have met before during your defense interview; correct?

A. Yes, that's correct.

Q. With Mr. Butner?

A. Yes.

Q. At your offices?

1 A. Yes.

2 Q. Okay. You are familiar with the DPS protocol for
3 seizing cell phones; correct?

4 A. Yes, I am.

5 Q. And you teach the protocol to different law
6 enforcement officers in the state of Arizona; correct?

7 A. Yes, I do.

8 Q. And part of the protocol or best practice is when
9 you seize a cell phone is to place it in airplane mode; is
10 that right?

11 A. Yes, if possible.

12 Q. Okay. And I think you described this a little bit
13 on direct, but when you place a phone into airplane mode, it
14 can't receive or send data?

15 A. That is correct.

16 Q. And is that why it is important to place the phone
17 in airplane mode when you seize it?

18 A. Yes.

19 Q. Because if you don't do that, it may send or
20 receive data after the seizure?

21 A. Correct. Among other reasons too, yes.

22 Q. Okay. And sometimes I think -- and we have a phone
23 that you have testified about that doesn't have airplane
24 mode; is that right?

25 A. Yes.

1 Q. And in that case, the best practice is to put the
2 phone in something called Faraday mesh; is that right?

3 A. No. The Faraday mesh would be used to prevent the
4 reception of the data while you're putting it to airplane
5 mode. Excuse me. Faraday mesh looks a lot like a nylon
6 stocking so you can see through it, but it's -- it's -- kind
7 of distorts or it makes it harder to see the display, but you
8 can see through it enough to push the buttons and to go
9 through the menus and put it to airplane mode.

10 Q. And it has metal in it that helps prevent the
11 transmission or receipt of data from the phone; is that
12 right?

13 A. Yes.

14 Q. Okay. So would it be proper protocol for an
15 officer to scroll through a cell phone as they were seizing
16 it without either placing it into airplane mode or putting it
17 into Faraday mesh?

18 A. It's not the best practice and things could happen,
19 yes.

20 Q. And one of those things could be the receipt or
21 transmission of data?

22 A. Yes.

23 Q. Okay.

24 A. Yes.

25 Q. And that's why DPS has this protocol for how to

1 treat a cell phone when you seize it; is that right?

2 A. Correct.

3 Q. Okay. You examined this number (928)713-1919,
4 which we have stipulated is Mr. DeMocker's phone. Did you
5 determine whether that phone had an airplane mode? And I see
6 are you referring to your report which has been admitted as
7 Exhibit 3351 with respect to that phone?

8 A. Yes. Yes, I am.

9 Q. Okay.

10 A. From the recovery point, I did not document whether
11 it was in airplane mode or not. I don't recall.

12 Q. You didn't document whether it was in airplane
13 mode?

14 A. Correct, whether I placed it in airplane mode or
15 not. I did not document.

16 Q. Can you determine whether or not that phone had an
17 airplane mode?

18 A. No, I don't know particularly for that particular
19 model.

20 Q. And based on your examination, you can't determine
21 from your report whether it had airplane mode; is that right,
22 as an option?

23 A. That is correct, I can't -- I can't determine.

24 Q. Okay. I want to talk to you now a little bit about
25 the text messages, and by way of example, I'm going to place

1 on the overhead what's been admitted into evidence as 3313.
2 And I want to particularly focus on the date and time down
3 here. This is Exhibit 3313 and the date and time it says
4 Wednesday, June 18th at 4:09 p.m. Do you see that?

5 A. Yes, I do.

6 Q. Okay. And I think that your testimony was that --
7 that that indicates the time that the message was sent. Is
8 that your testimony?

9 A. Yes, it is.

10 Q. Okay. Do you remember when we met in May at your
11 offices?

12 A. Yes, I do.

13 Q. Okay. And do you remember talking to me about the
14 ways in which that time can be affected?

15 A. Yes.

16 Q. Okay. And so in some instances, that time doesn't
17 indicate the time that the message was sent; is that right?

18 A. During our meeting previously, I said I would test
19 it and I did a test on my -- on my own phone.

20 Q. Right. I don't --

21 A. Okay.

22 Q. I'm not interested in your test on your phone.
23 What I'm interested in is what information is available on
24 this phone, this being Carol Kennedy's phone; is that
25 correct?

1 A. Yes.

2 Q. Okay. And when we met, you indicated to me that
3 that date and time -- not the date, but the time can be
4 affected if, for example, Ms. Kennedy's phone was turned off
5 when that message was sent; is that right?

6 A. Well, from my test and knowing it's Verizon and
7 reading blogs on this, I researched it, I can say that it was
8 sent at that time.

9 Q. Okay. So if Ms. Kennedy's phone was turned off
10 when that text message was sent and then she later turned her
11 phone on and received that text message, your testimony now
12 is that that's the time that the message was sent by the
13 sender's phone?

14 A. Sent and received.

15 Q. So if the message was sent at a time before it was
16 received, would you be able to determine from that time when
17 the message was sent and when it was received?

18 A. What will happen is there will be a second time and
19 date and it'll say stored and with the new time and date.
20 That's when it -- that's when it was actually received.

21 Q. Okay. And that's what you determined based on your
22 research?

23 A. On my research and my testing on the phone.

24 Q. And were there any messages within Carol Kennedy's
25 phone that had two dates and times to indicate that it was

1 received at one time and sent at another time?

2 A. I didn't see it from the exhibits that were
3 presented.

4 Q. Not from the exhibits that were presented, but from
5 your examination of Ms. Kennedy's phone and all the text
6 messages that you examined, was there any example where she
7 had two times on her phone to indicate that the time received
8 was different from the time that the text was sent?

9 A. I don't know. I'd have to go through the entire
10 media report, the CD.

11 Q. So you did an examination of your phone, your
12 personal phone?

13 A. Yes.

14 Q. And you determined that sometimes on your personal
15 phone, you would have two dates with a text message; is that
16 right?

17 A. Yes.

18 Q. And those two dates would be associated with the
19 time it was sent and the time it was received?

20 A. That's correct.

21 Q. But you did not go back to Ms. Kennedy's phone to
22 determine whether or not she had text messages with two dates
23 and times; is that correct?

24 A. No, I did not go through all her text messages and
25 determine whether there were two dates on -- on her phone.

1 Q. So you can't tell us whether there's an example on
2 her phone where there are two dates indicating a date for the
3 time sent and a date for the time received?

4 A. Not at this time, no.

5 Q. Okay. So what you told me during our interview was
6 that that time represented the time that the message was
7 received; is that right?

8 A. That is when it was sent and received.

9 Q. I understand that's what you're telling me now --

10 A. Yes.

11 Q. -- based on your examination --

12 A. Right.

13 Q. -- of your phone.

14 A. But during the interview, yes.

15 Q. Okay. And what you told me at that time was that
16 if a cell phone -- the receiver's cell phone, that is in this
17 instance Ms. Kennedy's cell phone, was powered off and then
18 she later powered the phone on, the time that she received
19 the message would be the time that was indicated on what
20 would be the text; is that right? The time would indicate
21 that the time that she turned her phone on and received the
22 message?

23 A. Yes, there would be a second time and date, so the
24 second one -- the latter one would be one that actually was
25 received by the phone.

1 Q. I understand that's what you're telling me now
2 based on your examination.

3 A. Yes.

4 Q. I also understand you didn't determine that that
5 ever occurred on Ms. Kennedy's phone; is that right?

6 A. That is correct.

7 Q. Okay. And so what I'm trying to clarify is the
8 information that you gave me during your interview was that
9 those two times could be different and not indicated on the
10 phone; is that right?

11 A. That is correct. I said I did not know. I
12 didn't -- I said I didn't know whether it could be determined
13 or not, but I did not know.

14 Q. Right. And so the ways that it could be affected
15 as you indicated in your interview would be if the receiver's
16 phone, that is Ms. Kennedy's phone, was turned off at any
17 particular time; is that correct?

18 A. Correct.

19 Q. Okay. Or if her phone was out of service area; is
20 that correct?

21 A. That is correct.

22 Q. Because if her phone was turned off or out of
23 service area, then she wouldn't receive the message at the
24 same time it was sent?

25 A. That is correct.

1 Q. Okay. And we don't know based on your examination
2 whether there was an example of a time when she received a
3 message at a time later than it was sent?

4 A. No, I don't.

5 Q. Okay. What I want to do now is place for you --
6 this is Exhibit 3276, the last page of that exhibit. This is
7 stapled, so I'll -- as I mangle the exhibit and have it
8 upside down. Do you see that and do you recognize what that
9 is?

10 A. Yes. I remember the previous testimony.

11 Q. Okay. And that's from your report numbered -- that
12 was admitted into evidence as 3347, your report of the phone
13 that was found in the dry bag; is that right?

14 A. Yes.

15 Q. Okay. And just to clarify for the jury, this is
16 not a text message; correct?

17 A. That is not.

18 Q. Okay. And could you describe what a banner is? A
19 screen banner I think is how you describe this.

20 A. Yes. When you open your phone up and it's on,
21 there's a default screen. The default screen could have a
22 picture that you personalize or one that's by default from
23 your service provider. You can also create a banner or a set
24 of characters that you've composed that you want to look at
25 and that you can do through the menu screen.

1 Q. So that's what this is? It's the screen that when
2 you open up your phone is initially shown; is that right?

3 A. That is correct.

4 Q. It's like your home screen for your cell phone?

5 A. Exactly.

6 Q. And anyone who has possession of the phone can
7 enter that information; is that right?

8 A. That is correct.

9 Q. Okay. And the date April 19th, that is April
10 19th, 2010, is that your testimony? That's what that date
11 reflects?

12 A. That's when I took the picture.

13 Q. And that would be -- the date and time that you
14 took the picture would be April 19th, 2010, 12:40?

15 A. That is correct.

16 Q. Because you in this -- in this exhibit are just
17 taking a picture of the home screen of the phone that you're
18 examining; is that right?

19 A. Yes.

20 Q. Okay. With respect to that phone, there were no
21 text messages on that phone; is that right?

22 A. Except for the one that I mentioned earlier.

23 Q. The one from Verizon indicating the security code?

24 A. Yes.

25 Q. There were no other text messages other than that?

1 A. No.

2 Q. And there were no indications of any voice mail?

3 A. No.

4 Q. And there were no photos?

5 A. No photos.

6 Q. And no indication that any calls had been made from
7 that phone?

8 A. That is correct. No calls.

9 Q. Were made from that phone?

10 A. There was nothing in the call log.

11 Q. So no incoming call and no outgoing calls; is that
12 right?

13 A. Either that or the call log was -- was cleared.

14 Q. And could you based on your review of the data
15 determine whether that had taken place?

16 A. No.

17 Q. Okay. And you are referring to your report, which
18 has been admitted into evidence as 3347, your report on the
19 phone that was found in the dry bag; is that right?

20 A. Correct.

21 Q. So there was no indication from your analysis of
22 this phone that it had ever been used; is that right?

23 A. That is correct.

24 Q. Okay. I want to look now at -- at an exhibit that
25 was introduced. This is 3280. This is very hard to see. I

1 think that's as good as I'm going to get it for now. Do you
2 recognize this Exhibit 3280 as a text message that you
3 received off of Mr. DeMocker's phone?

4 A. Yes.

5 Q. Okay. And the date and time is seven -- or
6 July 2nd of 2008 and it's 10:35 p.m.; is that right?

7 A. That is correct.

8 Q. Okay. And it says your brother just called me
9 worried. You call us. Is that right?

10 A. Yes.

11 Q. Okay. And you also found this text message on
12 Ms. Kennedy's phone; is that correct?

13 A. I don't recall.

14 Q. Okay. I'm going to show you what's been marked for
15 identification, but not yet admitted as Exhibit 3281. Do you
16 recognize that?

17 A. Yes. That appears to be the -- from Ms. Kennedy's
18 phone from her text messages that I -- that I photographed.

19 Q. And what is the date and time indicated on that
20 text message?

21 A. July 2nd at 10:35 p.m.

22 Q. And that came from your examination of
23 Ms. Kennedy's phone?

24 A. Yes.

25 MS. CHAPMAN: Your Honor, I would move for the

1 admission of 3281.

2 MR. BUTNER: No objection.

3 THE COURT: 3281 is admitted.

4 BY MS. CHAPMAN:

5 Q. So this is the text message that you recovered from
6 Ms. Kennedy's phone; is that right?

7 A. Yes.

8 Q. And it's the text message that we just looked at
9 from Mr. DeMocker, but we looked at it on his phone and this
10 is how we look at it on Ms. Kennedy's phone; is that correct?

11 A. That is correct.

12 Q. And it's the same text, your brother just called me
13 worried. Will you call us?

14 A. Correct.

15 Q. And it's the same date and time, July 2nd,
16 10:35 p.m.?

17 A. Correct.

18 Q. Thank you.

19 Did you also recover some photographs from
20 Ms. Kennedy's phone?

21 A. Yes.

22 Q. Okay. I'd like to show you what's been marked, but
23 not yet admitted as Exhibit 3348 and 3349.

24 MR. BUTNER: No objection that those be
25 admitted into evidence, your Honor.

1 THE COURT: Okay. 3348 and 49 are admitted.

2 BY MS. CHAPMAN:

3 Q. Can you take a look at those?

4 A. Yes.

5 Q. Do you recognize those photographs?

6 A. Yes, I do.

7 Q. And how do you recognize them?

8 A. These are photographs that I extracted from
9 Ms. Kennedy's phone, and I disclosed them on a CD report.

10 Q. Okay. And is there a way for you to determine
11 based on the data that you examined from Ms. Kennedy's phone
12 the date that those photographs were taken?

13 A. Yes.

14 Q. And how can you determine that?

15 A. Most phones or a lot of phones by convention
16 they'll stamp the date and time on the photograph to indicate
17 the local time that it was taken.

18 Q. And did that occur in this case with these
19 photographs?

20 A. Yes, it did.

21 Q. And can you tell me the date of these photographs?

22 A. June the 28th of '08.

23 Q. Okay. And for the record, I'm displaying for the
24 jury Exhibit 3349. And this is a photograph that you took
25 off Ms. Kennedy's phone; is that correct?

1 A. Yes, it is.

2 Q. And it was dated I believe you said June 28th?

3 A. Yes.

4 Q. Okay. And now I'll display for the jury
5 Exhibit 3348. Is this a photograph that you also took off
6 Ms. Kennedy's phone?

7 A. Yes.

8 Q. And it's also dated June 28th, 2008?

9 A. Yes.

10 Q. Okay. Now, you also retrieved text messages from
11 Ms. Kennedy's phone from June 28th; is that right?

12 A. Yes.

13 Q. Okay. And I think this is one of the text messages
14 that was entered into evidence. The Exhibit Number is 3329.
15 And the date on this text message is June 28th as well; is
16 that right?

17 A. Yes, it is.

18 Q. And this is a text message from Mr. DeMocker to
19 Ms. Kennedy?

20 A. Yes.

21 Q. And the text is: Home too. I felt terrible for
22 Char. Thanks for making that so enjoyable. Sleep well. Is
23 that right?

24 A. Yes.

25 Q. Okay. And this was also again to Ms. Kennedy's

1 phone; is that right?

2 A. Yes.

3 Q. From Mr. DeMocker's phone?

4 A. Correct.

5 Q. Okay. In addition to the text that we saw from
6 Mr. DeMocker's phone, did you recover photographs from his
7 phone as well?

8 A. Yes.

9 Q. Okay. I'm going to show you what's been marked for
10 identification, but not yet admitted as 3355 and 3354. So
11 for the record, I'm going to hand you what's been marked as
12 3355 and 3354.

13 MR. BUTNER: No objection that those be
14 admitted into evidence, Judge.

15 THE COURT: Okay. 3354 and 55 are admitted.

16 BY MS. CHAPMAN:

17 Q. Do you recognize those photographs?

18 A. Yes, I do.

19 Q. And what are those photographs, or where are those
20 photographs from?

21 A. These are from DeMocker's phone, and I extracted
22 them as part of my exam.

23 Q. Okay. Were you able to determine a date on which
24 these photos were taken?

25 A. Yes.

1 Q. And what date was that?

2 A. It was June the 28th of '08.

3 Q. That's the same date as the pictures we just looked
4 at from Ms. Kennedy's phone?

5 A. Yes.

6 Q. And the same date of the text messages we just
7 looked at?

8 A. Yes.

9 Q. I'm showing for the jury Exhibit 3355 and this
10 photograph then came from Mr. DeMocker's phone; is that
11 right?

12 A. That is correct.

13 Q. From June 28th of --

14 A. Yes.

15 Q. -- 2008?

16 And then displaying for the jury what has been
17 marked as 3354. Kind of looks like the photography I do.
18 But was this picture also found on Mr. DeMocker's phone?

19 A. Yes, it was.

20 Q. And it has the same date of June 28th, 2008; is
21 that right?

22 A. That is correct.

23 Q. Okay. Other than your examination of cell phones,
24 did you do any other work on this case -- let me back up.
25 You did examination of cell phones; is that right?

1 A. That is correct.

2 Q. And then you also assisted in the cloning of some
3 hard drives; is that right?

4 A. Imaging, yes.

5 Q. Okay. And other than the imaging and the
6 examination of cell phones, did you do any other work on this
7 case?

8 A. Not appreciably, no. It -- advice at times, but
9 no.

10 Q. That would have been advice about the computer
11 examination; is that right?

12 A. Yes.

13 Q. But your role substantively was limited in this
14 case to the examination of cell phones --

15 A. Yes.

16 Q. -- is that correct?

17 So even though you have some background in
18 forensic examination of computers, that's not what your
19 primary role was in this case?

20 A. That is correct.

21 MS. CHAPMAN: Thank you. I have no further
22 questions.

23 THE COURT: Thank you, Ms. Chapman.

24 Redirect, Mr. Butner?

25 MR. BUTNER: Just a little bit, Judge.

1 R E D I R E C T E X A M I N A T I O N

2 BY MR. BUTNER:

3 Q. Detective Hoover, you were talking about what DPS
4 recommended protocol is concerning the seizure of cell
5 phones; right?

6 A. Yes.

7 Q. And you indicated that -- I think the words you
8 used were best practice; is that right?

9 A. That is correct.

10 Q. Okay. Are you aware that frequently DPS officers
11 as well as other police officers encounter cell phones in the
12 course of their duties and scroll through them right then and
13 there?

14 A. Yes.

15 Q. And why is it that they do that to your
16 understanding?

17 MS. CHAPMAN: Objection. Speculation.
18 Foundation.

19 THE COURT: Sustained as to foundation.

20 BY MR. BUTNER:

21 Q. Do you have an understanding as to why the officers
22 rather quickly scroll through the cell phones rather than
23 bring them down to the lab for you to analyze them under
24 airplane mode?

25 MS. CHAPMAN: Same objection, your Honor.

1 Foundation and speculation.

2 THE COURT: That was denied. So, sir, you may
3 answer that question.

4 THE WITNESS: Well, one reason would be --

5 BY MR. BUTNER:

6 Q. It's a yes or no question.

7 A. Oh.

8 Q. Do you have an understanding as to why the officers
9 don't always bring the phones promptly down to you for you to
10 analyze them under airplane mode?

11 A. Yes.

12 Q. And what is your understanding as to why they don't
13 do that?

14 MS. CHAPMAN: Your Honor, calls for
15 speculation.

16 THE COURT: Well, sustained as to foundation
17 at this point. I don't know if you're making a foundation
18 objection.

19 MS. CHAPMAN: Foundation and speculation.

20 THE COURT: Is it your understanding why he
21 would know that?

22 MS. CHAPMAN: And how he could know why
23 officers do what they do in the field.

24 THE COURT: Sustained as to foundation at this
25 time.

1 BY MR. BUTNER:

2 Q. Detective Hoover, you were a patrol officer with
3 DPS; right?

4 A. Yes.

5 Q. And you worked in close conjunction with patrol
6 officers and DPS for how many years?

7 A. Approximately five years.

8 Q. Are you aware of practices of DPS patrol officers
9 in terms of what they do when they encounter cell phones with
10 people?

11 A. Not during the time that I was on patrol.

12 Q. No, because there weren't cell phones --

13 A. There weren't cell phones.

14 Q. -- during the time when you were on patrol.

15 A. Thank you very much.

16 Q. No offense.

17 What I mean in the past five years, say when
18 you've been at the -- at the forensic computer lab, have you
19 also worked with patrol officers in connection with the
20 performance of their duties?

21 A. Yes.

22 Q. And are you aware of -- of their practices on a
23 frequent basis when they encounter cell phones in the
24 performance of their duties?

25 A. Yes, I'm acquainted with practices.

1 Q. And are you aware -- do you have an understanding
2 as to how they frequently treat cell phones during the
3 performance of their duties?

4 A. Yes.

5 MS. CHAPMAN: Same objections, your Honor.

6 THE COURT: Overruled.

7 BY MR. BUTNER:

8 Q. And do they always follow your best practice
9 recommendation?

10 A. No.

11 Q. What's your understanding as to why they don't
12 follow your best practice recommendation?

13 MS. CHAPMAN: Foundation. Speculation.

14 THE COURT: Overruled.

15 THE WITNESS: Sometimes out of -- out of lack
16 of training and the proper way to do their -- do the job and
17 sometimes may be misguided urgency.

18 BY MR. BUTNER:

19 Q. And sometimes is there actual urgency?

20 A. Yes, there could be urgency also.

21 Q. And do you frequently get cell phones from DPS
22 officers where they haven't followed your best practice?

23 A. Yes.

24 Q. And does that present a big problem for you, or are
25 you able to analyze the phones anyway?

1 A. I analyze the phone anyway.

2 Q. In this particular case, the scrolling through of
3 one of the cell phones by one of the investigative officers
4 in this case, did you see any evidence whatsoever in any of
5 those three phones that you just analyzed that the scrolling
6 through of one of those phones somehow caused damage to that
7 evidence?

8 A. No, there was -- there was no damage.

9 Q. None whatsoever?

10 A. None that I could detect.

11 MR. BUTNER: Thank you. No further questions.

12 THE COURT: Thank you, Mr. Butner.

13 There are jury questions, so, Detective, if
14 you'd please remain seated there for a minute. I will go
15 over the jury questions. Depending on number and type, we
16 may need to take a recess depending on number.

17 THE WITNESS: Okay.

18 THE COURT: I'll see counsel at sidebar. We
19 may not need to make a contemporaneous record anyway.
20 Thanks.

21 (Sidebar discussion off the record.)

22 THE COURT: Thank you.

23

24 "Q U E S T I O N S B Y T H E J U R Y"

25 THE COURT: There are several questions for

1 this witness, but the first one really I will address. It
2 has to do with certain photographs. And if you will
3 remember, ladies and gentlemen, there have been instances
4 where I have noted that there has been foundation testimony
5 provided, but the exhibit is not fully admitted at that time.
6 It may be later, but it's not fully admitted and not
7 presented to the jury at this time.

8 Detective, the first question: Did Verizon
9 provide for a double time stamp for receiving texts outside
10 the Phoenix metro area? More specifically, was that service
11 available on July 2, 2008 in Prescott?

12 THE WITNESS: I would not be able to answer
13 that question since it's so specific. And my testing took
14 place in the Phoenix area, so I do not have any confirmation
15 by Verizon technicians or experts to tell me exactly what
16 areas and services are available. All I can say is what I
17 tested.

18 THE COURT: Follow-up, Mr. Butner?

19 MR. BUTNER: No follow-up, Judge.

20 THE COURT: Ms. Chapman?

21 MS. CHAPMAN: No, your Honor.

22 THE COURT: What date, including the year, was
23 the 848 prefix prepaid phone activated? What date, including
24 the year, was the 848 prefix prepaid phone activated?

25 THE WITNESS: I understand. From my cell

1 phone examination and that's just the information that's on
2 the cell phone, that date is not -- is not available from
3 that handset. That would have to come from Verizon, the
4 service provider, of when that service was actually
5 activated.

6 THE COURT: Mr. Butner?

7 MR. BUTNER: That was -- I need to get that
8 exhibit out anyway for one of those questions, Judge.

9 THE COURT: Okay.

10 MR. BUTNER: I'm trying to find which number
11 it was.

12 THE COURT: If the attorneys want to see the
13 questions, feel free to request.

14 MR. BUTNER: Okay. So this is -- and I'm
15 referring for the record to Exhibit 3276. I take it this is
16 admitted into evidence?

17 THE COURT: I have that it is.

18 MR. BUTNER: Okay. It hasn't been noted on
19 the back. I didn't want to be doing that if it wasn't.

20

21 "F O L L O W - U P Q U E S T I O N S"

22 BY MR. BUTNER:

23 Q. Okay. Referring to 3276 and this would be I guess
24 about the second page of that exhibit, it indicates at the
25 bottom I guess Thursday, July 3rd at 10:53 p.m.; right?

1 A. Yes.

2 Q. And that's the date that you're talking about that
3 you do not know the year of?

4 A. No. What I was saying is I don't know when the
5 phone was first activated, meaning that you could make a
6 telephone call on that phone.

7 Q. Okay. You mean this doesn't really relate to that
8 activation time?

9 A. I can't say for sure. I don't know. That's --
10 that's a message from Verizon saying that the security code
11 has been updated, so I don't know.

12 Q. This is the --

13 A. Okay. I don't know what Verizon is telling at
14 that.

15 Q. Okay. I'm waiting for you to be done. Are you
16 done?

17 A. I'm done.

18 Q. Okay. This was the only message that was on the
19 phone; right?

20 A. Yes.

21 Q. Could you tell when this message was received in
22 terms of the day and year?

23 A. Yes. July 3rd and I -- I would have to
24 anticipate that it would be 2008.

25 Q. And how is it that you would anticipate it was

1 2008?

2 A. From the circumstances of when it was recovered.

3 Q. I see. Okay. But there's nothing that appears in
4 the message or in the phone someplace internally in terms of
5 the data that would indicate the year when that message was
6 received?

7 A. No.

8 MR. BUTNER: Okay. Thank you.

9 THE COURT: Ms. Chapman?

10

11 "F O L L O W - U P Q U E S T I O N S"

12 BY MS. CHAPMAN:

13 Q. Detective Hoover, from your examination of this
14 phone, you can't determine the date -- the year date of this
15 message; is that right?

16 A. On the surface, no.

17 Q. Okay. And so -- and it's also your testimony then
18 that this text message doesn't necessarily relate to the
19 activation of this phone; is that right?

20 A. I don't take it that way, but...

21 Q. Okay. And you are not familiar with the
22 circumstances under which this phone was recovered; is that
23 right?

24 A. I don't know all the circumstances how it was
25 recovered, but I -- I know it was involved with the crime at

1 the time.

2 Q. Okay. Just to be clear, this phone number is
3 848-9639, so you know that this phone was recovered from a
4 dry bag at some location at some time; correct?

5 A. Yes.

6 Q. And is that what you know about the circumstances
7 of the recovery of this phone?

8 A. Yes. It was recovered shortly after the -- after
9 the crime.

10 Q. So you -- your testimony is that you know the date
11 that this phone was recovered?

12 A. No, I don't know exactly the date.

13 Q. Okay.

14 A. I know it's around the 3rd of July 2008.

15 Q. You know that this phone was recovered sometime
16 around the date of July 3rd, 2008? Is that your testimony?

17 A. That's my impression. That's what -- that's what
18 I'm -- that's what I've heard, yes.

19 MS. CHAPMAN: Okay. No further questions.

20 MR. BUTNER: Could I follow up on that, Judge,
21 please?

22 THE COURT: Yes.

23 (Next page, please.)
24
25

1 "F O L L O W - U P Q U E S T I O N S"

2 BY MR. BUTNER:

3 Q. Detective Hoover, when you were just testifying,
4 were you guesstimating when the phone was recovered?

5 A. Yes. I don't know.

6 Q. You don't really know when --

7 A. I don't know exactly when I --

8 Q. You know you shouldn't guess when you're under
9 oath; right?

10 A. My mistake.

11 MR. BUTNER: Okay. No further questions in
12 that regard.

13 MS. CHAPMAN: No follow-up. Thank you.

14

15 "Q U E S T I O N S B Y T H E J U R Y"

16 THE COURT: Then the next question: When you
17 extract text messages, contacts, pictures, et cetera, are you
18 able to view deleted messages as well?

19 THE WITNESS: Yes and no. Depends on the type
20 of phone and the type of equipment that we have. This --
21 it's a little bit more technical, but if you have a GSM
22 phone, which is AT&T or T-Mobile, they have a SIM card in
23 there which basically authorizes the -- the calls. It's like
24 the credit card for the phone. On a SIM card a limited
25 amount of text messages can be stored. And the equipment I

1 have can recover deleted text messages from the SIM card.

2 From the actual handset itself, no. With CDMA
3 phones, which is Verizon, Alltel, and Sprint, I can't -- once
4 it's deleted, I cannot get it back. There is some equipment
5 out there that's relatively expensive and has limited ability
6 to extract the physical -- all the data from the phone and
7 you're able to recover deleted text messages. I don't have
8 that equipment and I can't -- so I cannot get the text
9 messages back from the limited amount of handsets that that
10 will provide service for.

11 THE COURT: Mr. Butner?

12 MR. BUTNER: I think I need to ask a couple
13 follow-up questions about that.

14

15 "F O L L O W - U P Q U E S T I O N S"

16 BY MR. BUTNER:

17 Q. Now, if I understood what you just said, certain
18 cell phone service providers have CDMA phones?

19 A. Yes.

20 Q. And from CDMA phones, you cannot get the deleted
21 text messages back?

22 A. That is correct with the equipment that I have.

23 Q. Okay. And in this particular case, for example,
24 Mr. DeMocker's phone 713-1919, is that a CDMA phone?

25 A. Yes, it is. It's a Verizon phone which uses CDMA

1 technology.

2 Q. And so you couldn't get any deleted text messages
3 from that phone?

4 A. Correct.

5 Q. And in regard to Ms. Kennedy's phone, I forget the
6 number at the end, 8147 I believe is the last four, was that
7 a CDMA phone?

8 A. Yes, it is.

9 Q. And so you couldn't get deleted text messages from
10 that either?

11 A. No.

12 Q. How about the Go phone that we've been talking
13 about? Is that a CDMA phone?

14 A. Yes, it is.

15 Q. So you couldn't get any deleted text messages from
16 that one either?

17 A. No, I cannot.

18 Q. But you did indicate there was some kind of very
19 expensive equipment with a limited application that might be
20 useable?

21 A. Yes.

22 Q. Would it apply for these kinds of phone?

23 A. No, it won't. I checked the -- they have a matrix,
24 a spreadsheet, and these phones were not supported.

25 MR. BUTNER: All right. I have no further

1 follow-up. Thank you.

2 THE COURT: Thank you.

3 Ms. Chapman?

4

5 "F O L L O W - U P Q U E S T I O N S"

6 BY MS. CHAPMAN:

7 Q. So as I understand your testimony, there was no way
8 to retrieve the deleted cell phone messages or deleted texts
9 from either of these three cell phones; is that right?

10 A. Nothing that I have access to. I've heard that
11 there are ways to actually remove the chips from the
12 motherboard and to actually go through an analysis which is
13 extremely expensive and I have no training or knowledge on
14 how to do that.

15 Q. Okay. So no way available to you?

16 A. Yes.

17 MS. CHAPMAN: Thank you. No follow-up.

18 THE COURT: Before we go on, I want to clear
19 up a exhibit question. Mr. Butner, you displayed 3276. Is
20 that what's up there? Would you check that?

21 MR. BUTNER: This is 3276, Judge, yes. That's
22 why I looked at it and I said --

23 THE COURT: And without displaying any other
24 page of that and that's the -- just the general description.
25 There's several pages there.

1 MR. BUTNER: It is the screens that are on the
2 cell found in the dry bag, the cell phone found in the dry
3 bag.

4 THE COURT: Okay. Because apparently an
5 identical exhibit of 3320 was admitted, but not -- but not
6 3276. It's the same thing apparently, but --

7 MR. BUTNER: Well, I think --

8 THE COURT: -- let's just check that to make
9 sure.

10 MR. BUTNER: Okay. I think that exhibit that
11 you just mentioned -- where is it? Oh, it's up there. That
12 was the report that I was using, and they were attached to
13 the back of it. If I can find it, the report.

14 MS. CHAPMAN: I believe that report is
15 Exhibit 3347. 3347.

16 THE COURT: 3347. Okay.

17 MR. BUTNER: I don't know. But, Judge, I have
18 no objection to 32 -- I think it's 3276. I have no objection
19 to 3276 being admitted at this time.

20 MS. CHAPMAN: No objection, your Honor.

21 THE COURT: Okay. 3276 is admitted. I think
22 it's just in a different format.

23 MR. BUTNER: I think it has.

24 THE COURT: So 3276 is now admitted. Thank
25 you.

1 MR. BUTNER: Thank you.

2

3 "Q U E S T I O N S B Y T H E J U R Y"

4 THE COURT: There were several exhibits from
5 Carol's phone that had a scroll bar and text messages, but
6 only one page. Was that the full message?

7 THE WITNESS: It was not the complete screen
8 of that message. I noticed that also. The -- the very first
9 line where it says from and it would be from DeMocker's phone
10 number ending in 1919, that was not shown and then the
11 message showed and then there was a CB meaning call back with
12 DeMocker's phone number on there so it was redundant. There
13 were -- basically you didn't get the phone number of 1919 two
14 times.

15 THE COURT: Follow-up on that question?

16

17 "F O L L O W - U P Q U E S T I O N S"

18 BY MR. BUTNER:

19 Q. So just to clarify then, you do recall those
20 particular photographs of the cell phone text messages?

21 A. Yes.

22 Q. And the actual message itself, it was completely
23 shown in each of those photographs?

24 A. Yes.

25 Q. But the call-back number or the originating number,

1 one or the other might not have been shown in those and
2 that's why they --

3 A. The original number up on top was not there. There
4 should have been another screen shot showing the top portion
5 and then the bottom portion with the call-back number because
6 the screen didn't display the entire -- the entire message
7 with both.

8 Q. With both call-back and originating number?

9 A. Correct.

10 Q. And that's why the scroll bar was visible on the
11 side?

12 A. Yes.

13 MR. BUTNER: Okay. Thank you.

14 THE COURT: Ms. Chapman?

15

16 "F O L L O W - U P Q U E S T I O N S"

17 BY MS. CHAPMAN:

18 Q. I would like to put Exhibit 3219 on the screen and
19 just see if -- make sure I understand what you're saying. Is
20 this an example of where they put the scroll bar here on the
21 right-hand side of the message?

22 A. Yes, that dark bar right there.

23 Q. Okay. And so I think what your testimony is is
24 that although this indicates that there might be a message
25 above the screen we're not seeing, all that's there is the

1 from number; is that right?

2 A. Yes.

3 Q. And the reason that it's not printed is because
4 it's also duplicated down here from this call-back number; is
5 that right? This should be the same number?

6 A. Right. It would be the same number, the
7 originating number, the call-back number and the originating
8 number which would be about right here.

9 Q. Okay. So there's no text that's omitted from this
10 exhibit or any other where this bar appears, but there's not
11 a second page; is that right?

12 A. That is correct.

13 MS. CHAPMAN: Okay. Thank you.

14 THE COURT: Mr. Butner, anything else on this
15 point?

16 MR. BUTNER: No further questions on this
17 issue, Judge. Thank you.

18

19 "Q U E S T I O N S B Y T H E J U R Y"

20 THE COURT: And then the last question. I
21 think this is what has been displayed, but it's: Please read
22 the text from the 848-9639 phone again and number 3347.
23 Isn't that what was just there?

24 MR. BUTNER: Well, that is I think, Judge.
25 I'm looking for 3347, and I can't find it. But it's... thank

1 you. Okay. Just to clarify 3347 I have in my hand has
2 exactly the same message on it attached as 3276 so I'm going
3 to go ahead and use 3276. It's bigger and easier to read.

4 THE COURT: And it is -- please read the text
5 from the 9639 phone again, number 3347. If you could do
6 that.

7 THE WITNESS: Okay. From (928)848-9639
8 VZW-3-MSG: Your account security code has been updated to
9 1386. You will need this to access my prepay account or when
10 calling customer service. And it's dated Thursday, July the
11 3rd at 10:53 p.m.

12

13 "F O L L O W - U P Q U E S T I O N S"

14 BY MR. BUTNER:

15 Q. And that's basically the same message on the second
16 page?

17 A. Yes, that is.

18 Q. Just continuing?

19 A. Just continuing, yes.

20 MR. BUTNER: Thank you.

21 THE COURT: Okay. Thank you. Any follow-up,
22 Mr. Butner?

23 MR. BUTNER: No follow-up, Judge.

24 THE COURT: Ms. Chapman?

25 MS. CHAPMAN: No follow-up. Thank you.

1 THE COURT: Okay. Then, counsel, can
2 Detective Hoover be excused as a witness at this time or
3 subject to recall? I'm sorry.

4 JUROR FOUR: Your Honor, I apologize. I have
5 one more question.

6 THE COURT: Okay. Please hand it to Mr. King.
7 Phil, please display this to counsel. I think I can see them
8 very briefly at sidebar here.

9 (Sidebar discussion off the record.)
10

11 "Q U E S T I O N S B Y T H E J U R Y"

12 THE COURT: Okay. Detective, I have one more
13 question, and this calls for a yes or no answer only.

14 THE WITNESS: Okay.

15 THE COURT: Okay. Were there any texts from
16 Carol Kennedy's phone to Steve DeMocker's phone found?
17 That's a yes or no, if you know.

18 THE WITNESS: I don't know.

19 THE COURT: Okay. Thank you. Then now may
20 this witness be excused as a witness?

21 MR. BUTNER: Judge, I would like to have him
22 subject to recall.

23 THE COURT: Okay. Then, Detective Hoover, you
24 will be excused temporarily as a witness. However, there's a
25 possibility you will be recalled. Remember the rule of

1 exclusion of witnesses has been invoked. You've been with
2 DPS for a long time as an officer. I'm sure you understand
3 all aspects of that rule.

4 THE WITNESS: Absolutely.

5 THE COURT: Okay. Thank you. Please watch
6 your step when you step down.

7 THE WITNESS: Thank you.

8 (Brief pause.)

9 THE COURT: Okay. Ladies and gentlemen, there
10 was an indication that apparently there are exhibits
11 anticipated for the next witness and it's going to take some
12 time to get that arranged, so rather than just have a slow
13 start, I want to go ahead and recess. I'd like an estimate
14 though. How long, counsel, do you think that will take to --
15 to get the exhibit?

16 MR. BUTNER: 15 minutes, Judge.

17 THE COURT: All right then. Ladies and
18 gentlemen, please be ready to start I'm going to say at five
19 till, so about 20 minutes. Thank you. Remember the
20 admonition of course.

21 (Brief pause.)

22 ---oOo---

23 (Proceedings were held and reported, but are
24 not contained herein.)

25 ---oOo---

1 THE COURT: In any event, I want to -- I'm
2 going to take a recess right now. I do want to talk to
3 counsel about scheduling though. Thank you.

4 (Recess from 2:54 p.m. to 3:37 p.m.)

5 THE COURT: Thank you. Please be seated.

6 The record will show the presence of
7 defendant, counsel, and the jury.

8 Ladies and gentlemen, we are going to be
9 talking to jurors again as it turns out, and we're going to
10 recess at this point. Phil's going to have some very
11 important instructions for you, and I'll tell you tomorrow
12 morning, when we talk to the juries, I want to minimize the
13 number of people that are here waiting so I would like to
14 stagger when people appear at least in two groups, one at
15 9:00 and one at 10:00. I was suggesting perhaps that the
16 front row first or second. I don't have a preference. Phil
17 will work that out with you. If anybody has a particular
18 need tomorrow, let Phil know and we will accommodate that at
19 least, but I want to do that.

20 There's a possibility then we will be resuming
21 testimony and evidence in the afternoon at 1:30. So you can
22 keep that in mind. But remember the admonition and, please,
23 all of you need to talk to Phil before you leave and work out
24 when you'll be here, either 9:00 or 10:00, and there's some
25 other information that Phil will provide as well.

1 Mr. Butner.

2 MR. BUTNER: And, Judge, if I could boldly
3 suggest too, last time we didn't consider the distance some
4 jurors are traveling. The thought crossed my mind much
5 later, you know, whenever we were talking with jurors so I
6 thought maybe that would be something that ought to be
7 considered.

8 THE COURT: And that's what I'm hoping you
9 will tell Phil. If it's better for the 10:00 o'clock or
10 9:00 o'clock, just roughly breaking the group into two
11 groups, but if it's better for some people at a later time,
12 that's a good idea, Mr. Butner. But that's the type of thing
13 I'm thinking of or if there's something else you might need
14 to do in the morning, let Phil know and as long as we have
15 people here.

16 Counsel, anything else for the record?
17 Mr. Sears?

18 MR. SEARS: No, your Honor.

19 MR. BUTNER: Nothing from the State. Thanks,
20 Judge.

21 THE COURT: We will be in recess, and I will
22 be back out. Thank you.

23 ---oOo---

24 (Proceedings were held and reported, but are
25 not contained herein.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

---oOo---

(Proceedings concluded at 4:49 p.m.)

---oOo---

REPORTER'S CERTIFICATE

The above and foregoing is a true and complete transcription of my stenotype notes taken in my capacity as Acting Official Reporter of Yavapai County Superior Court, Kathy Johnston, Certified Reporter No. 50164, Division Six, at the time and place as set forth.

Dated at Prescott, Arizona, this 30th day of June, 2011.

Kathy Johnston

KATHY JOHNSTON
Certified Reporter No. 50164
Registered Professional Reporter

FILED ON _____